



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
APR - 3 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Tom Thomasser
Chief Operating Officer
Summit Brewing Company
910 Montreal Circle
St. Paul, Minnesota 55102

Re: Summit Brewing Company, St. Paul, Minnesota
Consent Agreement and Final Order
Docket No. **EPCRA-05-2015-0014**

Dear Mr. Thomasser:

Enclosed please find one copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed original CAFO with the Regional Hearing Clerk on April 3, 2015.

Please have your client pay the EPCRA civil penalty in the amount of \$7,825 in the manner prescribed in paragraphs 49 and 50, and reference their check with the docket number **EPCRA-05-2015-0014**

The payment is due on May 4, 2015.

Please feel free to contact Ruth McNamara at (312) 353-3193 or by e-mail at mcnamara.ruth@epa.gov if you have any questions regarding the enclosed documents. Please direct any legal questions to Deborah Klassman, Associate Regional Counsel, at (312) 886-6742 or by e-mail at klassman.deborah@epa.gov. Thank you for your assistance in resolving this matter.

Sincerely,

Michael B. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Summit Brewing Company
St. Paul, Minnesota

Respondent.



Docket No. EPCRA-05-2015-0014

Proceeding to Assess a Civil Penalty
Under Section 325(c)(1) of the Emergency
Planning and Community Right-to-Know
Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Summit Brewing Company, a corporation doing business in the State of Minnesota.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 910 Montreal Circle, St. Paul, Minnesota (facility).

17. At all times relevant to this CAFO, Respondent was an employer at the facility.

18. Respondent's facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

19. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Sulfuric acid is classified as a health hazard.

21. Sulfuric acid CAS# 7664-93-9 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

22. Sulfuric acid CAS# 7664-93-9 has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

23. During at least one period of time in calendar years 2011 through 2013 sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

24. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid.

25. Carbon dioxide is classified as a health hazard.

26. Carbon dioxide is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

27. Carbon dioxide CAS # 124-38-9 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

28. During at least one period of time in calendar years 2011 through 2013 carbon dioxide was present at the facility in an amount equal to or greater than the minimum threshold level.

29. OSHA requires Respondent to prepare, or have available, an MSDS for carbon dioxide.

30. Caustic soda is classified as a health hazard.

31. Caustic soda is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

32. Caustic soda CAS # 1310-73-2 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

33. During at least one period of time in calendar years 2011 through 2013 caustic soda was present at the facility in an amount equal to or greater than the minimum threshold level.

34. OSHA requires Respondent to prepare, or have available, an MSDS for caustic soda.

35. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC and fire department with jurisdiction over the facility on or before March 1, 2012 a completed emergency and hazardous chemical inventory form including sulfuric acid, carbon dioxide, and caustic soda for calendar year 2011.

36. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC and fire department with jurisdiction over the facility on or before March 1, 2013 a completed emergency and hazardous chemical inventory form including sulfuric acid, carbon dioxide and caustic soda for calendar year 2012.

37. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC and fire department with jurisdiction over the facility on or before March 1, 2014 a completed emergency and hazardous chemical inventory form including sulfuric acid, carbon dioxide, and caustic soda for calendar year 2013.

38. At all times relevant to this CAFO, the Minnesota Division of Homeland Security and Emergency Management was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

39. At all times relevant to this CAFO, the St. Paul Fire Department was the fire department with jurisdiction over the facility.

40. Respondent submitted to the SERC and St. Paul Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, carbon dioxide, and caustic soda on April 18, 2013, for calendar year 2011.

41. Each day that Respondent failed to submit to the SERC and St. Paul Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, carbon dioxide and caustic soda by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

42. Respondent submitted to the SERC and St. Paul Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, carbon dioxide, and caustic soda on April 18, 2013, for calendar year 2012.

43. Each day that Respondent failed to submit to the SERC and St. Paul Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, carbon dioxide and caustic soda by March 1, 2013, for calendar year 2012 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

44. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, carbon dioxide, and caustic soda on March 29, 2014, for calendar year 2013.

45. Each day that Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, carbon dioxide and caustic soda by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

46. Respondent submitted to the St. Paul Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, carbon dioxide, and caustic soda on March 29, 2014, for calendar year 2013.

47. Each day that Respondent failed to submit to the St. Paul Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, carbon dioxide and caustic soda by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

48. Complainant has determined that an appropriate civil penalty to settle this action is \$7,825. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

49. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,825 civil penalty for the EPCRA violations by sending a cashier's or certified check, payable to

"Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note the following: Summit Brewing Company and the docket number of this CAFO.

50. A transmittal letter, stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ruth McNamara, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Jacqueline Clark, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

51. This civil penalty is not deductible for federal tax purposes.

52. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 64, below, U.S. EPA may bring an action to collect any unpaid portion of the

penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

53. Pursuant to 31 C.F.R. §901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

54. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing the risk of a chemical spill and reduce the safety hazards involved with moving and transferring caustic chemical product. This project will also ensure that no pallets of drums could ever be damaged by forklifts in their shipping and receiving area nor would caustic chemicals ever be in a non-containment area.

55. At its facility, Respondent must complete the SEP as follows:

Respondent will install a bulk caustic product receiving/holding tank and install the necessary piping and safety system to safely transfer caustic product solution to areas of use in the facility without using drums, forklifts and pallet jacks.

56. Respondent must spend at least \$52,092 to purchase and install the necessary equipment.

57. Respondent certifies as follows:

I certify that Summit Brewing Company is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Summit

Brewing Company has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Summit Brewing is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

58. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

59. Respondent must submit a SEP completion report to U.S. EPA by August 1, 2015.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

60. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 50, above.

61. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

62. Following receipt of the SEP completion report described in paragraph 59, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 64 below.

63. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 64 below.

64. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO Respondent must pay a penalty of \$52,092.

- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 56, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 56, Respondent must pay a penalty equal to the difference between \$52,092 and actual costs incurred by Respondent.
- d. If Respondent did not submit timely the SEP completion report. Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$200	1st through 14th day
\$300	15th through 30th day
\$400	31st day and beyond

65. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

66. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 49 and 50 above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

67. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of EPCRA Section 312."

68. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

69. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

70. This CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

71. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

72. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

73. This CAFO does not affect Respondent's responsibility to comply with EPCRA and CERCLA and other applicable federal, state and local laws and regulations.

74. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

75. The terms of this CAFO bind Respondent and its successors and assigns.

76. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

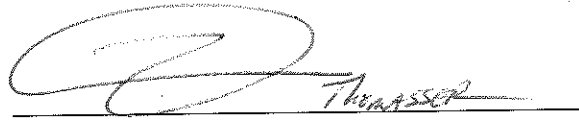
77. Each party agrees to bear its own costs and attorney's fees in this action.

78. This CAFO constitutes the entire agreement between the parties.

Summit Brewing Company, Respondent

3/12/2015

Date



Tom Thomasser
Chief Operating Officer
Summit Brewing Company

U.S. Environmental Protection Agency, Complainant

3/26/15


Date



Evette Jones, Acting Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

3-26-15

Date




Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Summit Brewing Company, St. Paul, Minnesota
Docket No. EPCRA-05-2015-0014

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3/31/2015
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: Summit Brewing Company, St. Paul, Minnesota
Docket No. EPCRA-05-2015-0014

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on April 3, 2015 in the following manner to the addresses:

Copy by Certified Mail

Tom Thomasser
Chief Operating Officer
Summit Brewing Company
910 Montreal Circle
St. Paul, Minnesota 55102

Copy by E-mail to
Attorney for Complainant:

Jacqueline Clark
clark.jacqueline@epa.gov

Copy by E-mail to
Regional Judicial:

Ann Coyle
coyle.ann@epa.gov

Dated: April 3, 2015



LaDawn Whitehead, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 7377